Court No. 5

Criminal Misc. Application No. 887/2001
Old No. 2556 of 1995

Kalyan Singh Rawat .....Applicant.

Versus

State .....Opposite Party.

Hon'ble Irshad Hussain, J.

This is a petition U/s 482 Cr.P.C. for quashing of the criminal proceedings of criminal case No. 260/1992 State Versus Kalyan Singh Rawal of P.S. Lohaghat District Pithoragarh U/S 409 IPC.

In short the ground for quashing of the proceedings taken is that in the departmental proceedings it was found that there was some mis-calculation about the money said to have been embezzled by the petitioner and on conclusion of the inquiry he was found liable to account for a sum of Rs. 47,429-50 and that amount was adjusted against his gratuity and pension. The averment of the affidavit of the petitioner itself indicate that the charge of embezzlement was prima facie established against him although the quantum was disputed and as against a sum of Rs. 63,415.00 his liability was fixed at Rs. 47,429-50. After adjustment of the said amount 'no dues certificate' Annexure-6 was issued. The learned Magistrate also considered this aspect of the matter when he made an elaborate discussion of the material before him while proceeding to frame charge against the petitioner for order dated 1.7.1005. In the face of the admitted facts there appears to be no infirmity either in the order passed by the learned Magistrate, which is Annexure-9, as well as regarding the sufficiency of the material against the petitioner which prima facie fix his liability. The offence in view of the allegations made in the F.I.R. stands prima facie substantiated after investigation which resulted in filing of charge sheet against him. The allegations therefore cannot be said to be inherently improbable or incredible and therefore the criminal proceedings cannot legally be quashed.

The petition lacks merit and is therefore dismissed. Stay order dated 28-8-1995 is vacated.

(Irshad Hussain, J.)

Dated: 25-8-03
ISB